

THE HONORABLE RICHARD A. JONES
THE HONORABLE MICHELLE L. PETERSON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

B.F. and A.A., minors, by and through their
guardian Joey Fields, et al.,

Plaintiffs,

v.

AMAZON.COM, INC., a Delaware
Corporation, and A2Z DEVELOPMENT
CENTER, INC., a Delaware corporation,

Defendants.

CASE NO. C19-910-RAJ-MLP

**AGREEMENT REGARDING
DISCOVERY OF ELECTRONICALLY
STORED INFORMATION AND
ORDER**

**NOTE ON MOTION CALENDAR:
NOVEMBER 7, 2018**

The parties hereby stipulate to the following provisions regarding the discovery of
electronically stored information (“ESI”) in this matter:

A. General Principles

1. An attorney’s zealous representation of a client is not compromised by conducting
discovery in a cooperative manner. The failure of counsel or the parties to litigation to cooperate
in facilitating and reasonably limiting discovery requests and responses raises litigation costs and
contributes to the risk of sanctions.

2. As provided in LCR 26(f), the proportionality standard set forth in Fed. R. Civ. P.
26(b)(1) must be applied in each case when formulating a discovery plan. To further the

1 application of the proportionality standard in discovery, requests for production of ESI and related
2 responses should be reasonably targeted, clear, and as specific as possible.

3 **B. ESI Disclosures**

4 Within 30 days of entry of this Order, or at a later time if agreed to by the parties, each
5 party shall disclose:

6 1. Custodians. The ten custodians most likely to have discoverable ESI in their
7 possession, custody or control. The custodians shall be identified by name, title, connection to the
8 instant litigation, and the type of the information under the custodian's control.

9 2. Non-custodial Data Sources. A list of non-custodial data sources (e.g., shared
10 drives, servers), if any, likely to contain discoverable ESI.

11 3. Third-Party Data Sources. A list of third-party data sources, if any, likely to
12 contain discoverable ESI (e.g., third-party email providers, mobile device providers, cloud
13 storage) and, for each such source, the extent to which a party is (or is not) able to preserve
14 information stored in the third-party data source.

15 4. Inaccessible Data. A list of data sources, if any, likely to contain discoverable ESI
16 (by type, date, custodian, electronic system or other criteria sufficient to specifically
17 identify the data source) that a party asserts is not reasonably accessible under Fed. R. Civ. P.
18 26(b)(2)(B).

19 **C. ESI Discovery Procedures**

20 1. On-site inspection of electronic media. Such an inspection shall not be required
21 absent a demonstration by the requesting party of specific need and good cause or by agreement
22 of the parties.

23 2. Search methodology. The parties shall timely confer to attempt to reach agreement
24 on appropriate search terms and queries, file type and date restrictions, data sources (including
25 custodians), and other appropriate computer- or technology-aided methodologies, before any such
26

1 effort is undertaken. The parties shall continue to cooperate in revising the appropriateness of the
2 search methodology.

3 In the absence of agreement, the following procedures shall apply:

4 a. Prior to running searches:

5 i. The producing party shall disclose the data sources (including
6 custodians), search terms and queries, any file type and date restrictions, and any other
7 methodology that it proposes to use to locate ESI likely to contain responsive and discoverable
8 information. The producing party may provide unique hit counts for each search query.

9 ii. The requesting party is entitled to, within 14 days of the producing
10 party's disclosure, add no more than 10 search terms or queries to those disclosed by the producing
11 party absent a showing of good cause or agreement of the parties.

12 iii. The following provisions apply to search terms/queries of the
13 requesting party. Focused terms and queries should be employed, broad terms or queries, such as
14 product and company names, generally should be avoided. A conjunctive combination of multiple
15 words or phrases (*e.g.*, "computer" and "system") narrows the search and shall count as a single
16 search term. A disjunctive combination of multiple words or phrases (*e.g.*, "computer or system")
17 broadens the search, and thus each word or phrase shall count as a separate search term unless
18 they are variants of the same word. The producing party may identify each search term unless they
19 are variants of the same word. The producing party may identify each search term or query
20 returning overbroad results, demonstrating the overbroad results and a counter proposal correcting
21 the overbroad search or query.

22 iv. The producing party shall quality check the data that is
23 nonresponsive to the search terms (the Null Set) by selecting a statistically random sample of
24 documents from the Null Set. The size of the statistically random sample shall be calculated using
25 a confidence level of 95% and a margin of error of 2%. If responsive documents are found during
26 the Null Set review, the producing party agrees to produce the responsive documents separate and

1 apart from the regular production. The parties will then meet and confer to determine if any
2 additional terms, or modifications to existing terms, are needed to ensure substantive, responsive
3 documents are not missed.

4 b. After production: Within 5 days of the producing party notifying the
5 receiving party that it has substantially completed the production of documents responsive to a
6 request, the receiving party may request no more than 5 additional search terms or queries. The
7 immediately preceding (Section C(2)(a)(iii)) applies.

8 3. Format.

9 a. ESI will be produced to the requesting party with searchable text, in a
10 format to be decided between the parties. Acceptable formats include, but are not limited to, native
11 files, multi-page TIFFs and JPEGs (with a companion OCR or extracted text file), single-page
12 TIFFs and JPEGs (only with load files for e-discovery software that includes metadata fields
13 identifying natural document breaks and also includes companion OCR and/or extracted text
14 files), and searchable PDF.

15 b. Unless otherwise agreed to by the parties, files that are not easily converted
16 to image format, such as spreadsheet, database and drawing files, will be produced in native
17 format.

18 c. Each document image file shall be named with a unique number/Bates
19 Number. File names should not be more than twenty characters long or contain spaces. When a
20 text-searchable image file is produced, the producing party must preserve the integrity of the
21 underlying ESI, *i.e.*, the original formatting, the metadata (as noted below) and, where applicable,
22 the revision history.

23 d. The parties shall produce their information in the following format: single-
24 age images and associated multi-page text files containing extracted text or with appropriate
25 software load files containing all information required by the litigation support system used by
26 the receiving party.

1 e. The full text of each electronic document shall be extracted (“Extracted
2 Text”) and produced in a text file. The Extracted Text shall be provided in searchable ASCII text
3 format (or Unicode text format if the text is in a foreign language) and shall be named with a
4 unique Bates Number (*e.g.*, the unique Bates Number of the first page of the corresponding
5 production version of the document followed by its file extension).

6 4. De-duplication. The parties may de-duplicate their ESI production across
7 custodial and non-custodial data sources after disclosure to the requesting party, and the duplicate
8 custodian information removed during the de-duplication process tracked in a duplicate/other
9 custodian field in the database load file.

10 5. Email-Threading. The Parties may use analytics technology to identify email
11 threads and need only produce the unique most inclusive copy and related family members and
12 may include lesser inclusive copies. Upon reasonable request, the producing party will produce a
13 less inclusive copy.

14 6. Metadata fields. If the requesting party seeks metadata, the parties agree that only
15 the following metadata fields need be produced, and only to the extent it is reasonably accessible
16 and non-privileged: document type; custodian and duplicate custodians (or storage location if not
17 custodian); author/from; recipient/to, cc and bcc; title/subject; email subject; file name; file size;
18 file extension; original file path; date and time created, sent, modified and/or received; hash value;
19 and message ID. The list of metadata type is intended to be flexible and may be changed by
20 agreement of the parties, particularly in light of advances and changes in technology, vendor, and
21 business practices.

22 **D. Preservation of ESI**

23 The parties acknowledge that they have a common law obligation, as expressed in Fed.
24 R. Civ. P. 37(e), to take reasonable and proportional steps to preserve discoverable information
25 in the party’s possession, custody, or control. With respect to preservation of ESI, the parties
26 agree as follows:

1 1. Absent a showing of good cause by the requesting party, the parties shall not be
2 required to modify the procedures used by them in the ordinary course of business to back-up
3 and archive data; provided, however, that the parties shall preserve all discoverable ESI in their
4 possession, custody, or control.

5 2. The parties will supplement their disclosures in accordance with Fed. R. Civ. P.
6 Rule 26(e) with discoverable ESI responsive to a particular discovery request or mandatory
7 disclosure where that data is created after a disclosure or response is made (unless excluded
8 under Sections (D)(3) or (E)(1)–(2).

9 3. Absent a showing of good cause by the requesting party, the following categories
10 of ESI need not be preserved:

- 11 a. Deleted, slack, fragmented, or other data only accessible by forensics.
- 12 b. Random access memory (RAM), temporary files, or other ephemeral data
13 that are difficult to preserve without disabling the operating system.
- 14 c. On-line access data such as temporary internet files, history, cache,
15 cookies, and the like.
- 16 d. Data in metadata fields that are frequently updated automatically, such as
17 last-opened dates (see also Section (E)(5)).
- 18 e. Back-up data that are substantially duplicative of data that are more
19 accessible elsewhere.
- 20 f. Server, system or network logs.
- 21 g. Data remaining from systems no longer in use that is unintelligible on the
22 systems in use.
- 23 h. Electronic data (*e.g.*, email, calendars, contact data, and notes) sent to or
24 from mobile devices (*e.g.*, iPhone, iPad, Android devices), provided that
25 a copy of all such electronic data is automatically saved in real time
26

elsewhere (such as on a server, laptop, desktop computer, or “cloud” storage).

D. Privilege

1. A producing party shall create a privilege log of all documents fully withheld from production on the basis of a privilege or protection, unless otherwise agreed or expected by this Agreement and Order. Privilege logs shall include a unique identification number for each document and the basis for the claim (attorney-client privileged or work-product protection). For ESI, the privilege log may be generated using available metadata, including author/recipient or to/from/cc/bcc names; the subject matter or title and date created. Should the available metadata provide insufficient information for the purpose of evaluating the privilege claim asserted, the producing party shall include such additional information as required by the Federal Rules of Civil Procedure. Privilege logs will be produced to all other parties no later than 30 days after delivering a production.

2. Redactions need not be logged as long as the basis for the redaction is clear on the redacted document.

3. With respect to privileged or work-product information generated after the filing of the complaint, parties are not required to include any such information in privilege logs.

4. Activities undertaken in compliance with the duty to preserve information are protected from disclosure and discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B).

5. Pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law. Information produced in discovery that is protected as privileged or work product shall be immediately returned to the producing party, and its production shall not constitute a waiver of such protection.

1 DATED: November 7, 2019

2 For Plaintiffs and the Putative Class

For Defendants, AMAZON.COM, INC. and
A2Z DEVELOPMENT CENTER, INC.

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5 By /s/ Lauren M. Hudson

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ORDER

Based on the foregoing, IT IS SO ORDERED.

DATED: November 13, 2019.



MICHELLE L. PETERSON
United States Magistrate Judge